JUL 29

In the Supreme Court of the United States

..... TERM, 197.....

No. A-1096

TERRY BROWN, ARLENE CIRELLI, PATRICK O'HEARN, and BOB YOUNG,
Petitioners,

vs.

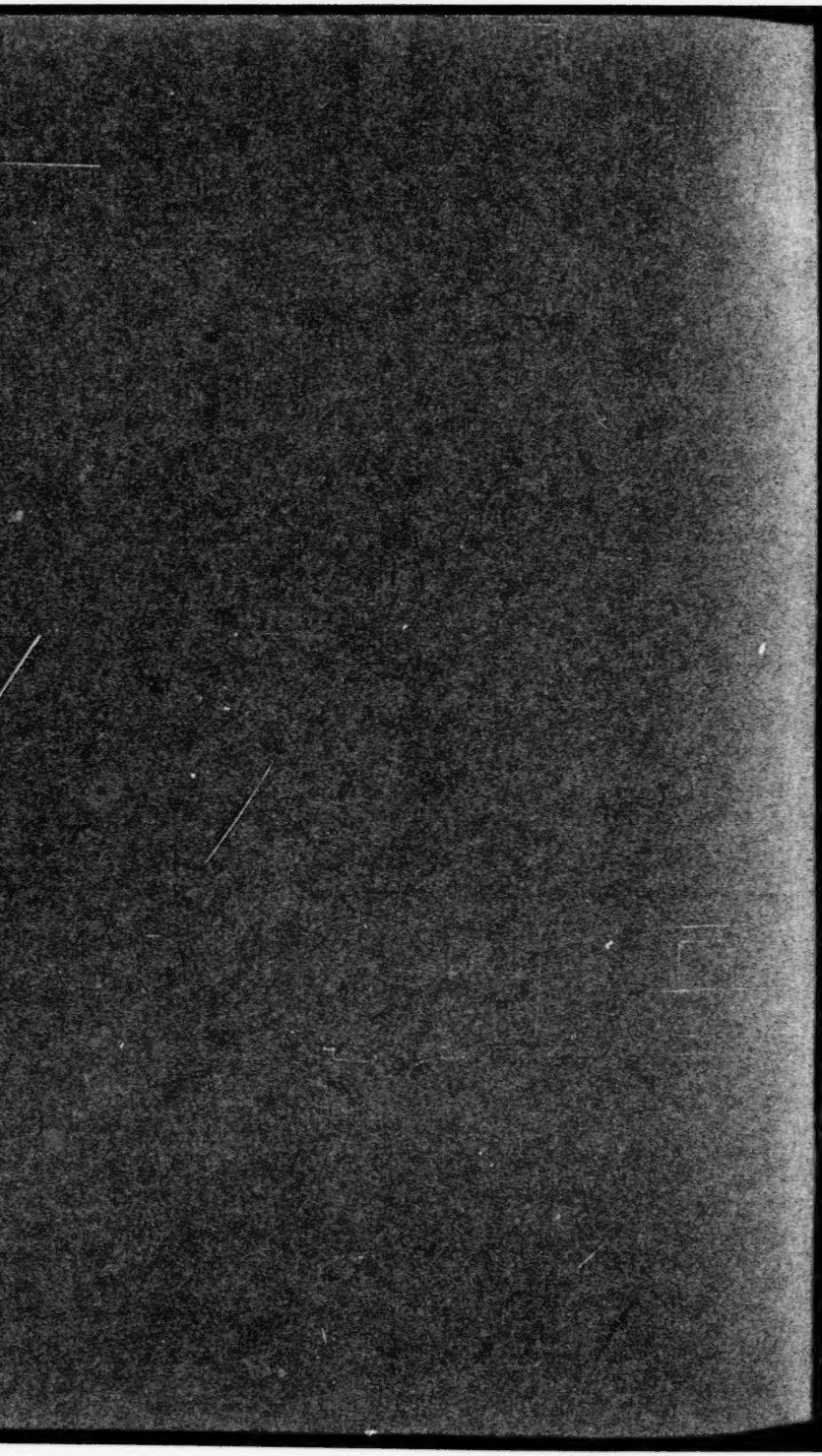
NEW MEXICO *ex rel.* A. L. HAPPY APODACA, A. L. HAPPY APODACA, DAVID L. NORVELL, Attorney General of the State of New Mexico, and BETTY FIORINA, Secretary of State of the State of New Mexico,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW MEXICO

BRIEF FOR RESPONDENTS IN OPPOSITION

IRVING E. MOORE
Attorney for Respondents
6001 Marble Avenue, N.E.
Albuquerque, New Mexico 87110

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, 421-3030



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NEW MEXICO *ex rel.* A. L. HAPPY APODACA, A. L. HAPPY APODACA, DAVID L. NORVELL, Attorney General of the State of New Mexico, and BETTY FIORINA, Secretary of State of the State of New Mexico,
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BRIEF FOR RESPONDENTS IN OPPOSITION

OPINION BELOW

In denying intervention to petitioners the Court below wrote no opinion. The orders denying intervention are set out in the Appendix, pp. 13-16, of the Petition. The opinion of the court below of New Mexico in *New Mexico ex rel. Apodaca* v. *Fiorina*, Vol. II, No. 2, N.M. State Bar Bull., pp. 14-18, is set out in the Appendix, infra, pp. A15-A32. The opinion and the Order Making Alternative Writ of Mandamus Absolute are set forth in the Appendix to the Jurisdictional Statement filed in *Norvell* v. *New Mexico, ex rel. Apodaca*, No. 71-....., pp. 1-A through 21-A.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTIONS PRESENTED

(1) Petitioners' interest was "adequately represented" by existing parties to the lawsuit.

(2) To allow petitioners' intervention would have the effect of creating havoc in the orderly process of bureaucratic government.

STATUTORY PROVISION INVOLVED

A. The Statute

New Mexico Statutes Annotated

§3-8-26 Primary Election Law—Filing fees.—The filing fee for each of the following offices is:

A. All officers receiving salary—6% of the first year's salary. . . .

STATEMENT OF THE CASE

With the noted exceptions, respondents accept the statement of the case as set out in Appellant's Jurisdictional Statement, pp. 3-9. Appellant in the Jurisdictional Statement by footnote concedes that the transcript of the proceedings below is not yet available and will not be available until May 8, 1972, at the earliest (Jurisdictional Statement 5). For that reason, appellant indicates that any references to testimony in the Jurisdictional Statement are based on the recollection and notes of those who were present at the hearing and respondents are in disagreement with the "recollection" of those at the hearing whom appellant relied upon. Therefore, because this is not a brief on the merits, respondents object to any references in appellant's brief

to testimony not available by transcript. It is irrelevant to the decision on granting certiorari.

I. Petitioners' Interest Was "Adequately Represented" by Existing Parties.

Petitioners contend that the action of the New Mexico Supreme Court in denying the motions for intervention was improper. They argue that such denial precluded any direct appeal to this Court on the merits, constituting a denial of due process. Yet, not once in the Petition do petitioners even allude to Rule 24, New Mexico Rules of Civil Procedure, nor is more than fleeting reference made to the principles surrounding the right of intervention. As to the argument which is presented by petitioners, respondents fail to perceive its relevancy to the determination of whether the action of the New Mexico court was proper. We would argue that controlling and determinative here are the principles applicable to Rule 24 which petitioners have so conveniently ignored.

The right to intervene is of two types: absolute, and discretionary or permissive. Rule 24(a) and (b), New Mexico Rules of Civil Procedure. At this juncture it should be noted that considerable reference will be made to the Federal Rules of Civil Procedure, particularly Rule 24, but respondents feel that the discussions will be applicable to the case at bar for New Mexico's Rule 24 has followed, completely, the changes in the Federal Rule.

Rule 24(a)(2), Federal Rules of Civil Procedure, dealing with the non-statutory absolute right to intervene, applicable in the case at bar, was amended in 1966. Under that former rule, an absolute right existed when the applicant claimed an interest in property in the hands of the court, or when the applicant was inadequately represented in an action in which the decision would be binding upon

applicant. By the 1966 Amendment, clauses (3) and (2), respectively, were merged into the present Rule 24(a)(2), making it consistent with the 1966 revision of Rules 19 and 23. The result of the 1966 Amendment was that now under Rule 24(a)(2), the absolute right exists only when the applicant claims an interest in the subject of the action, when the interest may be adversely affected by disposition of the action, and when the interest is not adequately represented. Although speaking of the Federal Rules, Judge Wright's comments in *Hobson* v. *Hansen*, 44 F.R.D. 18, 5 A.L.R. Fed. 497 (D.C.Colo. 1968), are applicable in the instant case. Judge Wright observes:

> While one's interest need no longer be decisively affected before intervention will be allowed, there is nothing in the new rule or in its attendant commentary to indicate that it effected a change in the kind of interest required. Thus the thrust of the revision seems clearly to be concerned with the adequacy of representation and not with any notion of expanding the types of interests that will satisfy the rule. Still required for intervention is a direct, substantial, legally protectable interest in the proceedings.

A careful reading of Rule 24(a)(2) quickly reveals that the grounds, discussed above, are subject to the condition that the applicant's interest be not adequately represented by existing parties. The 1966 Amendment, through the consolidation of clauses (2) and (3), rephrased the old standard so that the present Rule 24(a)(2) permits intervention "unless the applicant's interest is adequately represented by existing parties."[1] Because petitioners lack the

1. Noted by Justice Stewart in his dissent in *Cascade Natural Gas Corp.* v. *El Paso Natural Gas Co.*, (1967) 386 U.S. 129, 155, 87 S.Ct. 932, 17 L.Ed.2d 814, the "requirement of inadequate representation by existing parties as a precondition of the right to intervene under the new Rule 24 is obviously an adoption of the similar standard contained in the former 24(a)(2)."

statutory right to intervene in order to sustain their objection to the allegedly wrongful denial of intervention, it is necessary that they show, in addition to an interest which is threatened, inadequate representation by existing parties to the action. Such requirement is not without authority.

Petitioners have failed miserably in establishing any basis for assertions of inadequate representation, making only the fleeting suggestion that because the existing parties to this lawsuit were "public officials" they were "simply stakeholders of the public wealth with no real interest in the outcome of the lawsuit" and not "true adversaries." (Petition 8) The weakness of petitioners' convictions on this issue is clearly displayed when they state that, "Because of the lack of true adversaries, there is a **greater possibility** for collusive and fraudulent lawsuits in this type of litigation than in any other type." (Petition 8) But "greater possibility" in itself is not sufficient, for although many courts have traditionally taken a liberal approach to Rule 24(a), "Liberality, . . ., does not equate with the rights of indiscriminate intervention." *Peterson* v. *U. S.*, 41 F.R.D. 131 (D.C.Minn. 1966); *Standin* v. *Union Electric Co.*, 309 F.2d 912 (8th Cir. 1962). It has been well established by this Court in *U. S.* v. *Blue Chip Stamp Company*, 272 F. Supp. 432 (D.C.C.D. Calif. 1967), aff'd *Thrifty Shoppers Scrip Co.* v. *U. S.*, 389 U.S. 580, that:

> If the petitioners are appearing merely as members of the public, in the public interest, then it is incumbent upon them **to establish that the government has not acted properly in the public interest** (Emphasis supplied)
>
> 272 F.Supp. at 438.

It has been further held in *Peterson* v. *U. S.*, supra, that:

> The controlling rule is that representation is adequate if there is no collusion between the representatives and an opposing party, if the representative does not have or represent an interest adverse to the applicant, and if the representative does not fail in the fulfillment of his duty.
>
> 41 F.R.D. at 134.

See also *Standin* v. *Union Electric Co.*, supra.

This Court, in the earlier case of *State of New Jersey* v. *State of New York*, 345 U.S. 369 (1953), considered at some length the policy behind such a judicial position. That action, addressed to the original jurisdiction of this Court, was initiated by the State of New Jersey seeking injunctive relief against the State and City of New York to prevent the proposed diversion of the Delaware River. The State of Pennsylvania moved for leave to intervene, which was allowed. The City of Philadelphia then made a motion for intervention, as well—which was denied by the Court in this opinion. The Court directed particular attention to one of the arguments in opposition to the intervention "that the Commonwealth of Pennsylvania has the exclusive right to represent the interest of Philadelphia as parens patriae." The Court observed:

> The "parens patriae" doctrine however, has aspects which go beyond mere restatement of the Eleventh Amendment; it is a recognition of the principle that the state when a party to a suit involving a matter of sovereign interest, "must be deemed to represent all its citizens." *Kentucky* v. *Indiana*, 281 U.S. 163, 173, 174 (1930). This principle is a necessary recognition of sovereign dignity, as well as a working rule for good

> judicial administration. Otherwise a state might be judicially impeached on matters of policy by its own subjects, and there would be no practical limitation on the number of citizens, as such, who would be entitled to be made parties.
>
> 345 U.S. at 372, 373.

The Court discusses "the wisdom of the rule," pointing out that the City of Philadelphia represents only a part of the citizens of the state who reside in the watershed area affected by the proposed diversion. Realizing this fact and the possible ramifications thereof, the Court states that if all the separate interests were allowed to intervene the Court could, ". . . be drawn into an intramural dispute over the distribution of water within the Commonwealth." The Court further expresses the fear that the list of intervenors could never be closed with intervention by political subdivisions of the states, for there were the large industrial plants which, like cities, were corporate creatures of the state having interests just as substantial.

Petitioners' attempt to discount the Court's fears expressed in *New Jersey* v. *New York*, saying that here only the class who did not file the fee was involved, a group they describe as small in number (Petition 8). This is patently incorrect, for in the case at bar, not only did the class of candidates not filing fees number 92, but two of the petitioners also were supporters vis-a-vis voters of the State of New Mexico, and to allow them to intervene would open the door to all 431,608 of New Mexico's registered voters[2] to do likewise. The Court, in *New Jersey* v. *New York*, concerned about the expansion of its original jurisdiction (as was the New Mexico Supreme Court which

2. According to statistics compiled by the Secretary of State of New Mexico.

was likewise exercising original jurisdiction), set the following guidelines:

> Our original jurisdiction should not be thus expanded to the dimensions of ordinary class actions. An intervenor whose state is already a party should have the burden of showing some compelling interest in his own right, apart from his interest in a class with all other citizens and creatures, which interest is not properly represented by the state.
>
> 345 U.S. at 373.

A very brief and concise summation of the Court's action in this case is offered by Justice Jackson, writing for the dissent,[3] where he says:

> The city, of course, is not an indispensable party, and it is generally bad policy to encumber any case with unnecessary intervenors.
>
> 345 U.S. at 375.

Some question has been raised as to whether the 1966 Amendment's change in language from "when" the representation may be inadequate to "unless" the interest is adequately represented, and the relocation of such clause has had the effect of placing on the person opposing the intervention the burden of showing adequacy of representation. At least one leading authority, 3B Moore's Federal Practice, §24.09-1(4), has commented on this:

> In the absence of a stronger showing of rule-making intent, and according to traditional considerations of policy and convenience, the burden to show that repre-

3. Although Justice Jackson was writing for the dissent, it appears that he was swayed by the fact that New York City had been allowed to intervene earlier in the case and for that reason he argued for intervention.

> sentation may be inadequate ought to be upon the applicant. At the same time, it can be argued that the applicant should be the best judge of the adequacy of his own interests.

Accord, *Edmondson* v. *State of Nebraska*, 383 F.2d 123 (8th Cir. 1967). At the risk of being repetitious, respondents will note once again that petitioners have failed to carry this burden, almost to the degree of ignoring it. In fact, when the transcript of the hearings is available it will reflect that counsel for petitioners, when seeking intervention, admitted in open court that he had been retained by William S. Dixon, Special Assistant Attorney General, to represent petitioners in that matter. So it hardly seems proper that petitioners should now complain that the Attorney General failed to provide adequate representation.

Petitioners argue that the normal litigant's right of appeal might be lost by the action of the New Mexico court. By itself, such contention is without merit. Particularly appropriate here are Judge Zavatt's comments in *Blocker* v. *Board of Education of Manhasset, New York*, 229 F. Supp. 714, 715 (E.D.N.Y. 1964), quoted in *Hobson* v. *Hansen*, supra:

> Now that the Board has recognized this fact and decided not to appeal, some electors of the community have asked this court to appraise the soundness and propriety of that decision by finding that the petitioners may not be represented adequately by the Board. The issue is simply one of disagreement between the proposed intervenors and the Board; no allegation is made that the Board has been negligent or guilty of bad faith in reaching its determination. The Supreme Court, in a closely analogous situation has warned us of the danger inherent in such a judicial appraisal: * * *

> *Sam Fox Publishing Co.* v. *United States*, 366 U.S. 683, 698, 81 S.Ct. 1309, 6 L.Ed.2d 604 (1961). As one commentator has put it, "[r]epresentation by the governmental authorities is considered adequate in the absence of gross negligence or bad faith on their part." 4 Moore, Federal Practice ¶24.08 at 43 (2d ed. 1963). The court need not, however, pass upon the adequacy of the representation afforded the proposed intervenors by the defendant School Board.

Also quoted by the Court in *Hobson* is *Alleghany Corporation* v. *Kirby*, 344 F.2d 571 (2nd Cir. 1965), cert. dismissed as improvidently granted, 384 U.S. 28 (1966), where Judge Kaufman said:

> We fully agree with the District Court's conclusion that, on the record before it, the decision of the independent members of the Board of Directors not to apply for certiorari, after consultation with independent counsel and full presentation and consideration of relevant business and legal implications, did not result in "inadequate representation as a matter of law." We know of no proposition of law that permits shareholders, absent any allegations of bad faith, collusion or negligence, concededly neither present nor charged here, cf. Sam Fox Publishing Co. * * *, to intervene, as of right, in order to continue litigation that independent members of the Board of Directors, acting in good faith and in the exercise of sound business judgment, have decided to terminate. * * *
>
> Adequacy of representation, at least in the context of this case, depends not on our assessment of whether the Board should have authorized a certiorari petition, but rather on whether shareholder interests were fully and fairly considered when the Board reached its decision. Stated somewhat differently, the mere fact that

> a particular decision is adverse to certain interests does not necessarily mean those interests were not adequately represented in the decision-making process or in the decision itself.
>
> 344 F.2d at 573, 574.

See also *Spangler* v. *Pasadena City Board of Education*, 427 F.2d 1352 (9th Cir. 1970), in which the court affirmed the denial of intervention after concluding that the board of education had defended the action to compel integration in a full trial on the merits and that the decision not to appeal was made by a board of "elected representatives of the residents of the school district." Here again the determining factor is that of the adequacy of the representation, which will have to be assumed to be sufficient and adequate in the absence of any proof to the contrary.

Petitioners have made an emotional appeal, but examining the real issues reveals that the action of the New Mexico Court denying intervention was reasonable and based upon sound public policy. From the foregoing authority it is apparent that the mere fact that some citizens disagree will not justify allowing them to intervene in a lawsuit where there are elected representatives already representing the public interest. To allow intervention without a sufficient showing of bad faith or gross negligence would undermine the whole system of state government.

II. To Allow Petitioners' Intervention Would Have the Effect of Creating Havoc in the Orderly Process of Bureaucratic Government.

Aside from the legal arguments presented in Point I, the practical and philosophical aspects of the issue sought to be reviewed by this Court are so monumental that they, too, must be afforded consideration.

Though petitioners imply that the proposition permitting only public officials to litigate cases involving public issues is subject to limited approval, the proposition is vital to the very nature of representative government. The existence of the American Republic depends on the fundamental proposition that the elected representatives of government, within Constitutional guidelines, should be allowed to govern. Government "by the people, for the people and of the people" must be allowed to exert the responsibility with which it has been entrusted.

Essential to a system of elected officials is that these officials represent the interests of the people.

> The powers so delegated to the officer are held in trust for the people and are to be exercised in behalf of . . . all citizens. . . .
>
> 42 Am.Jur. §8, 885.

However, the system would fail if, on every question, individual citizens were allowed to formally intervene. To permit such intervention would destroy the need for elected officials and quickly lead to an anarchistic situation.

The case before the court exemplifies not only the necessity of governmental representation, but also, the autonomy so vital to that representation. Though petitioners only allude to the number of potential intervenors in the case, respondents believe that

> Appellate briefs must openly, candidly and **fully** acquaint the Supreme Court with the . . . consequences of the possible ruling. II C. Antineau, Modern Constitutional Law, 745, 15.49 (1969) (Emphasis supplied)

The consequences of a ruling by this Court in favor of petitioners' right of intervention would impliedly enable

431,608[4] registered voters of New Mexico to intervene. Further, the total number of candidates who had filed without fee and would, by petitioners' own admission, be directly affected by this lawsuit, amounts to 92.[5] Though 92 candidates and 431,608 voters as potential intervenors may not appear to petitioners to be a significant number, the absurdity of allowing that number of interventions in a suit where the opposing sides are more than adequately represented is obvious. Any attempt by the state, through its officials, to represent and protect the public interest on any issue would be disastrously crippled by allowing this intervention.

The importance of **this** protection and representation was recognized by Alexander Hamilton in the Federalist Papers No. 28,

> It may safely be received as an axiom in our political system that the state governments will, in all possible contingencies, afford complete security against invasions of the public liberty. . . .

To allow this intervention would not only jeopardize the vitality and autonomy of state governments, but also, would impliedly deny the responsibility and function of all bureaucratic government.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for certiorari should be denied.

Respectfully submitted,

IRVING E. MOORE
Attorney for Respondents
6001 Marble Avenue, N.E.
Albuquerque, New Mexico 87110

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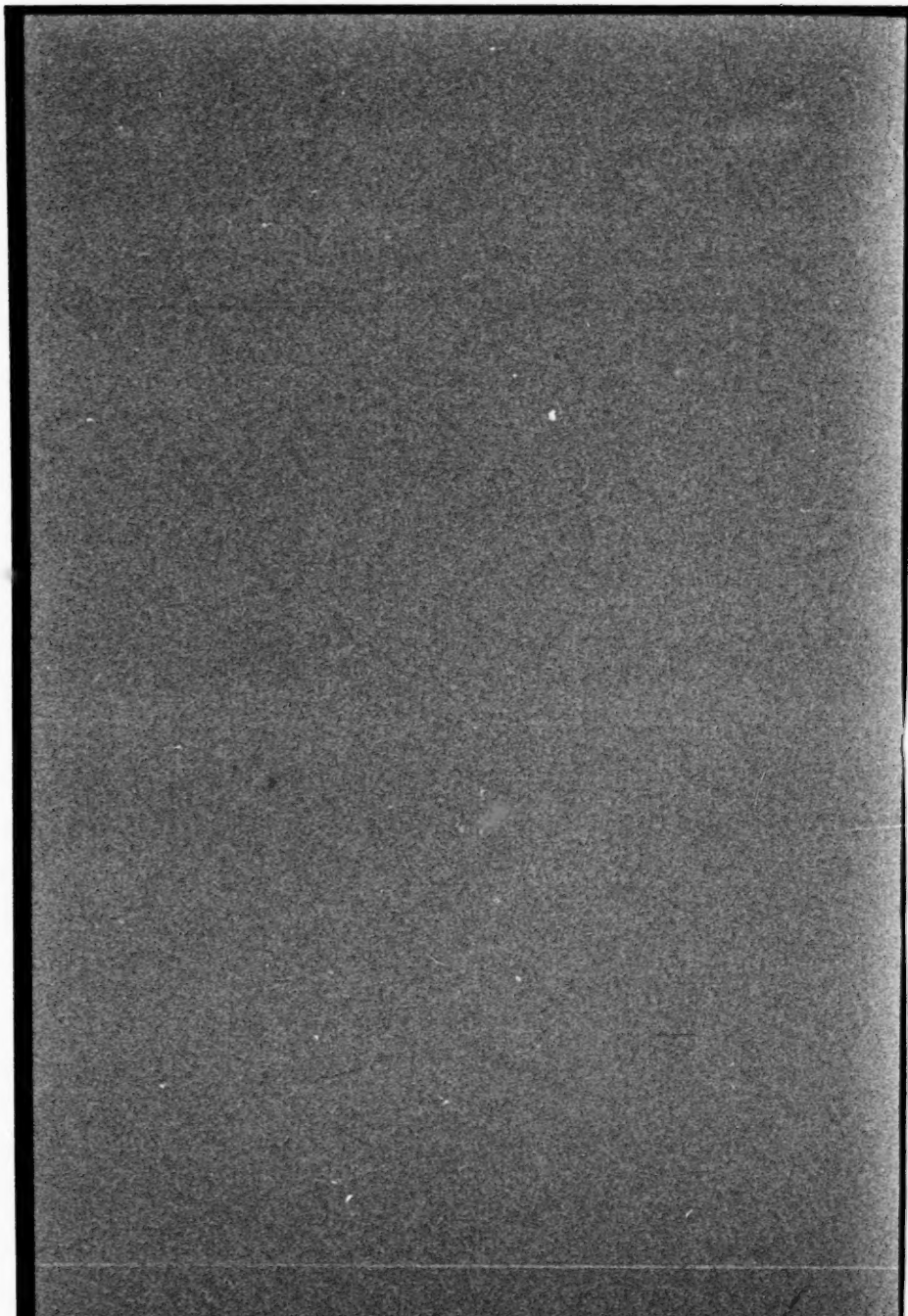
4. Supra, n. 2.

5. Statistics compiled apply only to those offices affected by the statute under question in this case.

APPENDIX



APPENDIX A

TO

BRIEF FOR RESPONDENTS IN OPPOSITION

Appendix A—Exhibit presented at the hearing before the New Mexico Supreme Court, April 7, 1972.

Compiled by the Office of the Secretary of State of New Mexico, Bureau of Elections, April 4, 1972.

A2

UNITED STATES SENATOR

Annual Salary: $42,500

FILING FEES PD.	NAME	ADDRESS	PARTY AFFILIATION	NO FEES PAID
	PHYLLIS B. NORMAN	3082 Woodland Road Los Alamos, N.M.	Democrat	$ 2,550
	E. LEE FRANCIS	Box 67 Cubero, N.M.	Republican	$ 2,550
	ORLIN G. COLE	4713 Overland, N.E. Albuquerque, N.M.	Democrat	$ 2,550
$2,550	*THOMAS G. MORRIS	5400 Lomas, N.E. Albuquerque, N.M.	Democrat	
	TIMOTHY M. McDONALD	409 Girard Blvd., S.E. Albuquerque, N.M.	Democrat	$ 2,550
	DAVID F. CARGO	Rt. 1, Box 204F Santa Fe, N.M.	Republican	$ 2,550
	THOMAS S. MACAIONE	988 Acequia Madre Santa Fe, N.M.	Democrat	$ 2,550
	JOHN H. MEIER	2205 Ambassador Rd. Albuquerque, N.M.	Democrat	$ 2,550
	JOSEPH M. KURCABA	9620 Euclid, N.E Albuquerque, N.M.	Republican	$ 2,550
	CRISIFORO GALLEGOS	Questa New Mexico	Republican	$ 2,550
	EMMA ALICE KREDAN	7417 Arvada, N.E. Albuquerque, N.M.	Democrat	$ 2,550
	ANSELMO A. CHAVEZ	1613 Walter, S.E. Albuquerque, N.M.	Democrat	$ 2,550
	BENVIZ M. CHAVEZ	515 North Orchard Farmington	Republican	$ 2,550
	STELLA M. MONTOYA	5523 Indian School, N.E. Albuquerque, N.M.	Republican	$ 2,550
$2,550	SUBTOTAL FEES PAID		SUBTOTAL NO FEES PAID	$33,150.

*Refund from petitioned no. of total valid signatures (561,550)

A3

UNITED STATES SENATOR

FILING FEES PD.	NAME	ADDRESS	PARTY AFFILIATION	NO. FEES PAID
	FILBERT A. JARAMILLO	512 Headingly, N.W. Albuquerque, N.M.	Democrat	$ 2,550
	WARREN F. LEE	1016 Vista Grande Drive N.W. Albuquerque, N.M.	Democrat	$ 2,550
$ 2,550	*JESSE D. KORNEGAY	907 Old Santa Fe Trail Santa Fe, N.M.	Democrat	
	EDDIE R. BARBOA	2929 Barcelona, S.W. Albuquerque, N.M.	Democrat	$ 2,550
	JACK R. HAIL	Box 284 Hagerman, N.M.	Democrat	$ 2,550
	JOSE ARSENIO ROMERO	Rt. 2, Box 75 (Agua Fria) Santa Fe, New Mexico	Democrat	$ 2,550
	CHARLES DONALDSON	Box 569 Santa Fe, N.M.	Democrat	$ 2,550
	WILLIAM J. CRONA, JR.	1115 Fruit Avenue, N.W. Albuquerque, N.M.	Democrat	$ 2,550
	NORBERT J. McGOVERN	11016 Phoenix, N.E. Albuquerque, N.M.	Democrat	$ 2,550
	ARMANDO LARRAGOITE, JR.	2100 Conejo Drive Santa Fe, N.M.	Democrat	$ 2,550
	WILLIAM J. DAHNKE	P. O. Drawer X Albuquerque, N.M.	Republican	$ 2,550
	DAVID ORTEGA	118 W. Ross Avenue Belen, N.M.	Democrat	$ 2,550
	MERRILL D. JOHNS, JR.	Box 2425 Santa Fe, N.M.	Republican	$ 2,550
	MIKE LONDON	220 Copper, N.W. Albuquerque, N.M.	Republican	$ 2,550
	TONY MIGNARDOT	P. O. Box 5073 Santa Fe, N.M.	Republican	$ 2,550
	VALENTINO T. DeLAO	1207 Presidio Pl., S.W. Albuquerque, N.M.	Republican	$ 2,550
$ 2,550	SUBTOTAL FEES PAID		TOTAL NO FEES PAID	$38,250

*Filing fees paid based on 6% of first year's salary ($42,500)

A4

UNITED STATES SENATOR

PAID? (Y/N)	NAME	ADDRESS	AFFILIATION	FEE
	ERNESTINE D. CHINO	P. O.Box 5312 Santa Fe, N.M.	Democrat	$ 2,550
	REGINALDO ESPINOSA, II	P. O. Box 206 Espanola, N.M.	Democrat	$ 2,550
	MAURICE MALCOLM DILLON	6305 Camino Ocho, S.W. Albuquerque, N.M.	Democrat	$ 2,550
	CLOVIS O. HERRERA	P. O. Box 1 Los Lunas, N.M. 87031	Democrat	$ 2,550
	RAYMOND E. GARVEY	1104 Apt. Lead Ave., S.W. Albuquerque, N.M.	Democrat	$ 2,550
	DAVID L. NORVELL	2329 Calle Halcon Santa Fe, N.M.	Democrat	$ 2,550
$2,550	*JACK DANIELS	P. O. Box 1258 623 E. Baja Drive Hobbs, N.M.	Democrat	
	ROBERT A. MONDRAGON	Rt. 1, Box 139A Santa Fe, N.M.	Democrat	$ 2,550
	CLARENCE GAILARD	Rt. 3, Box 3105A Albuquerque, N.M.	Democrat	$ 2,550
$2,550	*PETE V. DOMENICI	720 Monroe, N.E. Albuquerque, N.M.	Republican	
$5,100	SUBTOTAL FEES PAID		SUBTOTAL NO FEES PAID	$20,400
$10,200	GRAND TOTAL: FEES PAID		GRAND TOTAL: NO FEES PAID	$91,800

A5

STATE OF NEW MEXICO
OFFICE OF THE SECRETARY OF STATE
BUREAU OF ELECTIONS

FILING DAY (3-8-21)
APRIL 4, 1972

FILING FEES PD.	NAME	ADDRESS	PARTY AFFILIATION	NO FILING FEES PD
$ 2,550	*GEORGE A. GONZALES	122 Barranca Rd. P. O. Box 2058 Santa Fe, N.M.	Democrat	
$ 2,550	*MANUEL LUJAN, JR.	1209 California, N.E. Albuquerque, N.M.	Republican	
	MICHAEL ALNRID	1608 Escalante, S.W. Albuquerque, N.M.	Democrat	$ 2,550
	SIBY N. LUCERO	P.O. Box 567 Ojo Caliente, N.M.	Democrat	$ 2,550
	JACKIE SUASO	1328 Maclovia Santa Fe, N.M.	Democrat	$ 2,550
	TERRY BROWN	351 E. Garcia Santa Fe, N.M.	Democrat	$ 2,550
	THEODORE R. WILSON	3014 Calle Quieta Santa Fe, N.M.	Democrat	$ 2,550
	SPARKLE PLENTY	P. O. Box 1635 Santa Fe, N.M.	Democrat	$ 2,550
$ 2,550	*EUGENE GALLEGOS	P.O. Box 2498 Santa Fe, N.M.	Democrat	
	JOHN W. FLYNN	830 Zia Road Santa Fe, N.M.	Democrat	$ 2,550
	RICHARD MARTINEZ	1007 Shirley,N.E. Albuquerque, N.M.	Republican	$ 2,550
$ 7,650	TOTAL FEES PAID		TOTAL FEES NOT PAID	$ 20,400

*Filing fees paid based on 6% of first year's salary ($42,500.00)

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STATE OF NEW MEXICO
OFFICE OF THE SECRETARY OF STATE
BUREAU OF ELECTIONS

FILING DAY (3-8-21)
April 4, 1972

UNITED STATES REPRESENTATIVE (DISTRICT 2)

FILING FEES PD.	NAME	ADDRESS	PARTY AFFILIATION	NO FILING FEES PD.
$ 2,550	*HAROLD RUNNELS	210 South 7th Lovington, N.M.	Democrat	
	HOWARD M. OVERSTREET	402 E. 3rd Avenue P. O. Box 1081 Truth or Consequences, N.M.	Republican	$ 2,550
	REUBEN E. PAINEY	P. O. Box 672 Truth or Consequences, N.M.	Republican	$ 2,550
	GEORGE E. PRESSON	713 W. 7th Street Silver City, N.M.	Republican	$ 2,550
$ 2,550	TOTAL FEES PAID		TOTAL FEES NOT PAID	$ 7,650

*Filing Fees Paid based on 6% of first year's salary ($42,500.00)

A7

STATE OF NEW MEXICO
OFFICE OF THE SECRETARY OF STATE
BUREAU OF ELECTIONS

STATE CORPORATION COMMISSION

FILING FEES PD.	NAME	ADDRESS	PARTY AFFILIATION	FILING FEES NOT PD.
	ALFRED J. ARMIJO	1701 Princeton, S.E. Albuquerque, N.M.	Democrat	$ 1,200
✓	PATRICK H. O'HEARN	3705 Campus, N.E. Albuquerque, N.M.	Democrat	$ 1,200
✓	LLOYD W. MILES	12201 Lomas, N.E. Albuquerque, N.M.	Democrat	$ 1,200
	LANGDON D. HARRISON	5327 Montgomery, N.E. Albuquerque, N.M.	Democrat	$ 1,200
✓	SANDY MARTINEZ	1214 National Las Vegas, N.M.	Democrat	$ 1,200
1,200*	JAKE BARTH	P. O. Box 201, Fairview Station Espanola, N.M.	Democrat	
1,200*	BEN F. RAMSEY	3213 Siringo Road Santa Fe, N.M.	Democrat	
	JOE L. GARNER	5313 Mescalero, N.E Albuquerque, N.M.	Democrat	$ 1,200
1,200*	COLUMBUS FERGUSON	P. O. Box 716 Taos, N.M.	Democrat	
1,200*	M. L. HAPPY APODACA	P. O. Box 68 Mesilla, N.M.	Democrat	
✓	JOE M. BARELA	1513 Osage Rd., S.W Albuquerque, N.M.	Democrat	$ 1,200
	FRANK S. HARLOW, JR.	923 Corrillos Rd., No. 4 Santa Fe, N.M.	Republican	$ 1,200
	H. LOUIS WEBER	7101 Cerrillos Road Rt. 2, Box 344 Santa Fe, N.M.	Republican	$ 1,200
	LARRY HEMS	1005 West Buena Vista Roswell, N.M.	Republican	$ 1,200
1,000	TOTAL FEES PAID		TOTAL FEES NOT PAID	$12,000

*Filing fees paid based on 6% of first year's salary ($20,000.00)

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STATE OF NEW MEXICO
OFFICE OF THE SECRETARY OF STATE
BUREAU OF ELECTIONS

NEW MEXICO SUPREME COURT JUSTICE

FILING FEES PAID	POSITION NO.	NAME	ADDRESS	PARTY AFFILIATION	FILING FEES NOT PAID
	1	Joe L. Martinez	928 Avenida Manana Albuquerque, N. M.	Democrat	$1770
	1	Peter E. Gallagher	2509 Morrow, N.E. Albuquerque, N. M.	Democrat	$1770
770	*1	J. C. Compton	501 Armenta Santa Fe, N. M.	Democrat	
770	*1	Finis Leroy Heidel	Box 1298 Lovington, N. M. 88260	Democrat	
770	*1	W. Peter McAtee	Box 568 Albuquerque, N. M. 87103	Democrat	
	1	Charles M. Tansey	P. O. Box 659 Farmington, N. M. 87401	Republican	$1770
	2	James M Scarborough	P. O. Box 71 Espanola, N. M. 87532	Democrat	$1770
	2	Oliver E. Payne	802 Waldo Street Santa Fe, N. M. 87501	Democrat	$1770
770	*2	Samuel Z. Montoya	216 Sombrio Drive Santa Fe, N. M. 87501	Democrat	
	2	J. Ernest Corey	3200 Valencia Drive, N.E. Albuquerque, N. M.	Republican	$1770
	2	Thomas E. Jones	Suite 1503 First National Bank Building, East Albuquerque, N. M. 87108	Republican	$1770

000.00 SUB TOTAL FEES PAID SUB TOTAL FEES NOT PAID $12,390

* Filing Fees Paid Based on 6% of the First Year's Salary ($29,500.00)

STATE OF NEW MEXICO
OFFICE OF THE SECRETARY OF STATE
BUREAU OF ELECTIONS

NEW MEXICO JUSTICE OF THE COURT OF APPEALS

FILING FEES PAID	TERM	NAME	ADDRESS	PARTY AFFILIATION	FEES NOT P
$1680	*8 yr.	Joe W. Wood	1922 Fort Union Drive Santa Fe, N. M. 87501	Democrat	
		NONE	NONE	REPUBLICAN	
	4yr.	Ramon Lopez	General Delivery Algodones, N. M.	Democrat	$1680
	4yr.	Ellis J. French	7705 Marble, N.E. Albuquerque, N. M. 87103	Democrat	$1680
$1680	*4yr.	Paul Armand Phillips	9800 Chapala Drive, N.E. Albuquerque, N. M.	Democrat	
	4yr.	Jack Underwood	P. O. Box 1366 Ruidoso, N. M. 88345	Democrat	$1680
$1680	*4yr.	Ray C. Cowan	P. O. Box 2008 Santa Fe, N. M. 87501	Democrat	
		NONE	NONE	REPUBLICAN	
	2yr.	William J. Torrington	1101 Western Meadows Alameda, N. M. 87114	Democrat	$1680
$1680	*2yr.	Lewis R. Sutin	P. O. Box 2008 Santa Fe, N. M. 87501	Democrat	
	2yr.	Edwin W. Stockly	P. O. Box 29 Los Alamos, N. M.	Republican	$1680

$6720.00 SUB TOTAL FEES PAID SUB TOTAL FEES NOT PAID $8400.

* Filing Fees Paid Based on 6% of the First Year's Salary ($2800.00)

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STATE OF NEW MEXICO
OFFICE OF THE SECRETARY OF STATE
BUREAU OF ELECTIONS

NEW MEXICO DISTRICT JUDGES
Salary: $27,000.00

FILING FEE PD.	DISTRICT NO.	NAME	ADDRESS	PARTY AFFILIATION	FEE NOT PAID
	1-Div. 1	NONE	NONE	REPUBLICAN	
$ 1,620	*1-Div. 1	Thomas A. Donnelly	865 Don Diego Santa Fe, N. M.	Democrat	
	1-Div. 1	Lyle E. Teutsch, Jr.	P. O. Box 4086 Santa Fe, N. M. 87501	Democrat	$ 1,620
	1-Div. 2	NONE	NONE	REPUBLICAN	
$ 1,620	*1-Div. 2	Edwin L. Felter	P. O. Box 186 Santa Fe, N. M. 87501	Democrat	
	1-Div. 3	NONE	NONE	REPUBLICAN	
	1-Div. 3	Santiago E. Campos	P. O. Box 2268 Santa Fe, New Mex. 87501	Democrat	1,620
$ 1,620	*2-Div. 1	Frederick Martin Mowrer	10016 Inca Court, N.E. Albuquerque, N.M. 87111	Republican	
$ 1,620	*2-Div. 1	Harry E. Stowers, Jr.	1408 Wellesley Drive, N.E. Albuquerque, N. M.	Democrat	
$ 1,620	*2-Div. 2	H. Richard Blackhurst	4909 Guadalupe Trail, N.W. Albuquerque, N. M. 87107	Republican	
	2-Div. 2	Tom Clear	7112 Aztec Road, N.E. Albuquerque, N. M. 87110	Republican	1,620
	2-Div. 2	Scott H. Mabry	1318 Alvarado Drive, N.E. Albuquerque, N. M. 87110	Democrat	1,620
	2-Div. 2	Joseph B. Zucht	3201 Valencia, N.E. Albuquerque, N. M. 87110	Democrat	1,620
$ 1,620	*2-Div. 2	Joseph F. Baca	4720 Douglas MacArthur, N.E. Albuquerque, N. M.	Democrat	
	2-Div. 3	Dale B. Dilts	5706 Hannett, N.E. Albuquerque, N. M. 87110	Republican	1,620
$ 1,620	*2-Div. 3	Joseph C. Ryan	Star Route 208 AB Alameda, N. M.	Republican	
	2-Div. 3	James D. Sidwell	456 Val Verde, S.E. Apt. 7 Albuquerque, N. M. 87108	Democrat	1,620
	2-Div. 3	Terrance L. Dolan	3213 Alvarado, N.E. Albuquerque, N. M. 87108	Democrat	1,620
$ 1,620	*2-Div. 3	Thomas E. Davis	1516 Richmond Drive, N.E. Albuquerque, N. M. 87106	Democrat	
	2-Div. 4	B. Thomas May	200 Simms Building Albuquerque, N. M. 87101	Republican	1,620
$ 1,620	*2-Div. 4	William F. Riordan	8804 Hilton, N.E. Albuquerque, N. M. 87111	Republican	
	2-Div. 4	Addison L. Strong	1415 Stanford, N.E. Albuquerque, N. M.	Republican	1,620
	2-Div. 4	Samuel Mandel	7209 Ottawa Road, N.E. Albuquerque, N. M. 87110	Democrat	1,620
$ 1,620	*2-Div. 4	Mary C. Walters	4108 Delamar, N.E. Albuquerque, N. M.	Democrat	
$ 1,620	*2-Div. 5	Gerald D. Fowlie	1615 San Patricio, S.W. Albuquerque, N. M. 87104	Republican	
$ 1,620	*2-Div. 5	Richard B. Traub	1404 Solano Court, N.E. Albuquerque, N. M.	Democrat	
$19,440	Subtotal Fees Paid			Subtotal fees not pd.	$17,820

*Filing fees paid based on 6% of first year's salary ($27,000.00)

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STATE OF NEW MEXICO
OFFICE OF THE SECRETARY OF STATE
BUREAU OF ELECTIONS

NEW MEXICO DISTRICT JUDGES

FILING FEES PD.	DISTRICT NO.	NAME	ADDRESS	PARTY AFFILIATION	FEE NOT PAID
$ 1,620	*2-Div. 6	Paul F. Larrazolo	4716 Rovene Avenue, N.E. Albuquerque, N. M. 87110	Republican	
	2-Div. 6	NONE	NONE	DEMOCRAT	
	2-Div. 7	David W. King	820 Monroe, N.E. Albuquerque, N. M. 87110	Republican	1,620
$ 1,620	*2-Div. 7	James A. Maloney	1324 Morningside, N.E. Albuquerque, N. M. 87110	Democrat	
$ 1,620	*2-Div. 8	H. Vern Payne	3424 Georgia Street, N.E. Albuquerque, N. M. 87110	Democrat	
$ 1,620	*2-Div. 8	Quincy D. Adams	902 Morningside, N.E. Albuquerque, N. M.	Democrat	
	2-Div. 8	NONE	NONE	REPUBLICAN	
	3-Div. 1	NONE	NONE	REPUBLICAN	
$ 1,620	*3-Div. 1	E. Forrest Sanders	P. O. Box 1387 Las Cruces, N. M.	Democrat	
	3-Div. 2	NONE	NONE	REPUBLICAN	
$ 1,620	*3-Div. 2	Garnett R. Burks, Jr.	Dona Ana County Courthouse Las Cruces, N. M. 88001	Democrat	
	4-No Div.	NONE	NONE	Republican	
	4-No Div.	Joe Angel	Montezuma, N. M. 87731	Democrat	1,620
	5-Div. 1	NONE	NONE	REPUBLICAN	
$ 1,620	*5-Div. 1	D. D. Archer	P. O. Box 156 Artesia, N. M. 88210	Democrat	
	5-Div. 2	Paul Snead	P. O. Box 1776 Roswell, N. M. 88201	Democrat	1,620
	5-Div. 2	NONE	NONE	REPUBLICAN	
$ 1,620	* 5-Div. 3	Kermit E. Nash	P. O. Box 2099 Hobbs, New Mexico 88240	Democrat	
	5-Div. 3	NONE	NONE	REPUBLICAN	
	6-No Div.	NONE	NONE	REPUBLICAN	
1,620	* 6-No Div.	Norman Hodges	P. O. Box 390 Silver City, N.M. 88061	Democrat	
	7-No Div.	David Eldon Douglas	P. O. Box R Socorro, N. M. 87801	Republican	1,620
1,620	*7-No Div.	Edmund H. Kase III	P. O. Box 1276 Socorro, N. M.	Democrat	
	8-No Div.	NONE	NONE	REPUBLICAN	
1,620	*8-No Div.	John B. Wright	P. O. Box 160 Raton, N. M. 87740	Democrat	
	9-No Div.	NONE	NONE	REPUBLICAN	
1,620	* 9-No Div.	James C. Compton	P. O. Box 809 Portales, N. M. 88130	Democrat	
1,620	* 9-No Div.	Dee C. Blythe	P. O. Box 98 Clovis, N. M. 88101	Democrat	
21,060	Subtotal Fees Paid		Subtotal fees not paid:		$ 6,480

*Filing fees paid based on 6% of first year's salary ($27,000.00)

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STATE OF NEW MEXICO
OFFICE OF THE SECRETARY OF STATE
BUREAU OF ELECTIONS

NEW MEXICO DISTRICT JUDGES

ING ES PD.	DISTRICT NO.	NAME	ADDRESS	PARTY AFFILIATION	FEES NOT PAID
1,620	*10-No Div.	Eugene E. Brockman	P. O. Box 984 Tucumcari, N. M. 88401	Republican	
1,620	*10-No Div.	Robert M. Rowley	P. O. Box 927 Tucumcari, N. M. 88401	Democrat	
	10-No Div.	Manford William Rainwater	P. O. Box 1268 Tucumcari, N. M. 88401	Democrat	$ 1,620
1,620	*10-No Div.	Stanley F. Frost	P. O. Box 784 Tucumcari, N. M. 88401	Democrat	
	11-Div. 1	NONE	NONE	REPUBLICAN	
1,620	*11-Div. 1	James W. Musgrove	P. O. Box 568 Aztec, N. M.	Democrat	
	11-Div. 2	NONE	NONE	REPUBLICAN	
1,620	*11-Div. 2	Frank B. Zinn	P. O. Box 460 Gallup, N. M. 87301	Democrat	
	12-No Div.	NONE	NONE	REPUBLICAN	
	12-No Div.	George L. Zimmerman	P. O. Box 38 Alamogordo, N. M. 88310	Democrat	$ [illegible]
1,620	*12-No Div.	Richard A. Stanley	P. O. Box 636 Alamogordo, N. M. 88310	Democrat	
1,620	*13-No Div.	Verne Hale	P. O. Box 1028 Grants, N. M. 87020	Republican	
1,620	*13-No Div.	Filo M. Sedillo	P. O. Box 777 Los Lunas, N. M. 87031	Democrat	
1,620	*13-No Div.	Joe A. Duran	North Star Route, Box 204-B Corrales, N. M.	Democrat	
14,580		Subtotal Fees Paid		Subtotal fees not paid:	$ [illegible]
55,080		GRAND TOTAL FEES PAID		GRAND TOTAL FEES NOT PD.	$27,[illegible]

*Filing fees paid based on 6% of first year's salary ($27,000.00)

STATE OF NEW MEXICO
OFFICE OF THE SECRETARY OF STATE
BUREAU OF ELECTIONS

NEW MEXICO DISTRICT ATTORNEY

FILING FEES PD.	DISTRICT NO.	NAME	ADDRESS	PARTY AFFILIATION	FEES NOT PAID
	1	NONE	NONE	REPUBLICAN	
$ 180	*1	Joe Cruz Castellano, Jr.	P. O. Box 1453 Santa Fe, N. M. 87501	Democrat	
$ 180	*1	James C. Thompson	P. O. Drawer JJ Espanola, N. M.	Democrat	
	2	Lawrence T. Buchmiller	7713 El Conde, N.E. Albuquerque, N. M.	Republican	$540
$ 540	*2	Alexander F. Sceresse	1508 Indiana, N.E. Albuquerque, N. M.	Democrat	
$ 180	*3	H. Gregg Privette	Suite 1016 First National Tower, Las Cruces, N. M.	Republican	
$ 180	*3	E. H. Williams, Jr.	P. O. Box 1333 Las Cruces, N. M. 88001	Democrat	
$ 180	*4	Jose E. Armijo	500 Reynolds Avenue Las Vegas, N. M. 87001	Republican	
$ 180	*4	Donaldo A. Martinez	Las Vegas County Courthouse Las Vegas, N. M. 87001	Democrat	
	5	NONE	NONE	REPUBLICAN	
$ 180	*5	Pat Hanagan	P. O. Box 1513 Roswell, N. M. 88201	Democrat	
	6	NONE	NONE	REPUBLICAN	
$ 180	*6	E. C. Serna	16 Crestway Silver City, N. M. 88061	Democrat	
	7	Hal W. Everett	501 Main, P. O. Box 1050 Truth or Consequences, N. M.	Republican	$180
$ 180	*7	Paul Marshall	P. O. Box 1412 Socorro, N. M. 87801	Democrat	
	7	Claron Earl Waggoner	P. O. Box 917 Socorro, N. M. 87801	Democrat	$180
	8	NONE	NONE	REPUBLICAN	
$ 180	*8	John E. Hobbes	Cimarron, N. M.	Democrat	
	9	NONE	NONE	REPUBLICAN	
	9	Fred T. Hensley	P. O. Box 119 Portales, N. M. 88130	Democrat	$180
$ 180	*9	Morris D. Stagner	P. O. Box 925 Clovis, N. M. 88101	Democrat	
	10	NONE	NONE	REPUBLICAN	
$ 180	*10	Norman E. Runyan	P. O. Box 927 Tucumcari, N. M. 88401	Democrat	
	11	Richard G. Boren	931 Crestview Drive Farmington, N. M. 87401	Republican	$180
180	*11	Louis E. DePauli	P. O. Drawer 38 Gallup, N. M. 87301	Democrat	
	12	NONE	NONE	REPUBLICAN	
180	*12	Norman D. Bloom, Jr.	R.R.1, Box 51 (No. Florida Ave) Alamogordo, N. M. 88310	Democrat	
3,060		Subtotal fees paid		Subtotal fees not paid	$1,260

*Filing fees paid based on 6% of first year's salary ($3,000) Every county except Bernalillo ($5,000)

STATE OF NEW MEXICO
OFFICE OF THE SECRETARY OF STATE
BUREAU OF ELECTIONS

NEW MEXICO DISTRICT ATTORNEY

FILING FEES PD.	DISTRICT NO.	NAME	ADDRESS	PARTY AFFILIATION	FEE NOT PAID
	13	William Paul Kearns, Jr.	P. O. Box 907 Grants, N. M. 87020	Republican	$180
180	*13	Frederick B. Howden	P. O. Box 718 Los Lunas, N. M.	Democrat	
180	*13	George H. Perez	El Banco Apartments Calle del Banco Bernalillo, N. M.	Democrat	

350 Subtotal fees paid — Subtotal fees not paid $ 180

3,420 GRAND TOTAL FEES PAID — GRAND TOTAL FEES NOT PD. $1,440

APPENDIX B

TO

BRIEF FOR RESPONDENTS IN OPPOSITION

No. 9454

STATE OF NEW MEXICO, ex rel.
A. L. HAPPY APODACA, and
A. L. HAPPY APODACA,
Relators,

vs.

BETTY FIORINA, Secretary of State of the State of New Mexico, and DAVID L. NORVELL, Attorney General of the State of New Mexico,
Respondents.

ORIGINAL MANDAMUS PROCEEDINGS

STANDLEY, WITT & QUINN
BIGBEE, BYRD, CARPENTER & CROUT
PAUL D. GERBER
Santa Fe, New Mexico — Attorneys for Relators

DAVID L. NORVELL, Attorney General
WILLIAM S. DIXON, Special Asst. Atty. Gen.
Albuquerque, New Mexico — Attorneys for Respondents

Relators petitioned for a writ of mandamus requiring Respondent Secretary of State to certify only the names of persons who paid the filing fees prescribed by §3-8-26A, N.M.S.A., 1953 (Repl. Vol. 1, 1970) as candidates in the primary election scheduled to be held June 6, 1972, or, alternatively, to certify only those who would tender such fees within such time and under such conditions and restrictions as we might prescribe. It appears from the petition that the Respondent Attorney General has advised the Secretary of State to proceed in a different manner.

We issued our Alternative Writ which, following a lengthy evidentiary hearing and elaborate briefs and arguments of counsel, was made permanent with provision for permitting persons who had attempted to file as candidates without paying filing fees to pay the fees to the appropriate authority within a prescribed time. Finally, our permanent writ made it clear that Messrs. Orlin Cole, Malcolm Dillon and Clarence Gailard were unaffected by anything we said.

A complex course of events has gone before. In Federal District Court, Messrs. Dillon, Cole and Gailard brought an action against Mrs. Fiorina in which they asserted a desire to become candidates for the Democratic nomination to the office of United States Senator, claiming to be unable to pay the filing fees required by §3-8-26A, supra. As a result, they claimed to be deprived of equal protection of the laws. Dillon v. Fiorina, U.S.D.C. N.M., No. 9340 Civil, issued March 24, 1972.

Trial was had before a three-judge panel. Attorney General Norvell purportedly defended Mrs. Fiorina. No evidence was tendered to show that the filing fee is "reasonably necessary to the accomplishment of legitimate state objectives." The three-judge panel handed down a Memorandum Opinion and entered a Final Judgment restraining Mrs. Fiorina from enforcing §3-8-26A, supra, against the mentioned gentlemen if any of them "files an application to become a candidate for nomination for the office of United States Senator in the next primary election."

The Attorney General did not appeal Dillon nor seek a stay. He has not appeared before us in these proceedings.

On March 20, 1972, Respondent Norvell issued a Memorandum Directive on primary election procedures to the Governor and Mrs. Fiorina which instructed Mrs. Fiorina

that "no filing fees should be assessed any candidate, otherwise qualified for the offices covered by Section 3-8-26(A) and (B) * * *." Section 3-8-26A encompasses all salaried officers to be elected in the upcoming primary. It does not relate to members of the legislature, members of the State Board of Education and County Surveyors, offices with which we are not here concerned.

Filing Day, April 4, 1972, was not uneventful. For the office of United States Senator, twenty-eight candidates filed for the Democratic nomination and twelve for the Republican. Of these, three Democrats and one Republican paid filing fees.

Similar activity took place in the races for both congressional districts, the judicial races, and so on through the list. In the race for State Corporation Commission, eleven Democrats and three Republicans filed, of whom four Democrats, including Relator, paid filing fees.

Thereafter, on April 7, 1972, Relator petitioned for an alternative writ, which was issued on the same day.

Article VII, Section 1 of the New Mexico Constitution provides in pertinent part:

> "The legislature shall enact such laws as will secure the secrecy of the ballot, the purity of elections, and guard against the abuse of elective franchise."

In Bullock v. Carter, 40 U.S.L.W. 4211 (1972), the court said:

> "The Court has recognized that a State has a legitimate interest in regulating the number of candidates on the ballot. *Jenness* v. *Fortson*, 403 U.S., at 442; *Williams* v. *Rhodes*, 393 U.S., at 32. In so doing, the State understandably and properly seeks to prevent the clogging of its election machinery, avoid voter confusion, and

assure that the winner is the choice of a majority, or at least a strong plurality, of those voting without the expense and burden of runoff elections. Although we have no way of gauging the number of candidates who might enter primaries in Texas if access to the ballot were unimpeded by the large filing fees in question here, we are bound to respect the legitimate objectives of the State in avoiding overcrowded ballots. Moreover, a State has an interest, if not a duty, to protect the integrity of its political processes from frivolous or fraudulent candidacies. *Jenness* v. *Fortson*, 403 U.S., at 442."

The Chief Justice recognized in a subsequent statement that it is the "serious candidates" with whom we are concerned. He perceptively pointed out that:

"* * * And even assuming that every person paying the large fees required by Texas law takes his own candidacy seriously, that does not make him a 'serious candidate' in the popular sense. * * *"

Taken as a whole, having in mind the constitutional mandates laid down by the New Mexico Constitution, the recognition of the legitimate objectives of avoiding overcrowded ballots and the Chief Justice's comments concerning "serious candidates," the reasonable result is that it is not merely the frivolous or fraudulent candidacies which may constitutionally be excluded, but also those candidates who are not "serious."

We accept the New Mexico constitutional mandate and the pronouncements of the United States Supreme Court in Bullock as our guidelines in arriving at our decision.

The precise question presented in this case for determination concerns §3-8-26(A), supra, which provides:

"The filing fee for each of the following offices is:

"A. All officers receiving salary
6% of the first year's salary."

The Respondents urge that this section is unconstitutional and void as a violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution. This enactment of the statute constitutes New Mexico "State action." Bullock v. Carter, supra.

For good or ill, this is an elected court. It is thus inevitable that no matter what result we might have reached, there would be those who would say that we had favored one candidate over another, or one party over another, or one social philosophy over another. This is a cross we accepted with our certificates of election. It is, nevertheless, true that our selective process has placed us in contact with the stream of governmental and political life in New Mexico, and in touch with its realities and practical concepts.

New Mexico political history and legislative attempts to regulate elections are fascinating subjects. Three percent filing fees have been tried but found wanting. The modest expenditure was not sufficient to preclude the filing of "stooge" candidates. In New Mexico political parlance, a "stooge candidate" is one who is filed by, or whose filing is caused or procured by, a candidate or his adherents with a view of dividing the vote which would presumably be garnered by his opponent. Such efforts often developed along ethnic lines. For instance, a Spanish-speaking candidate would be filed to "split the native vote" to the supposed disadvantage of a serious contender of that lineage, which would be countered by filing a candidate "to split the Anglo vote," and so on and on.

This was an evil which resulted in confusion of the electorate and an abuse of the elective franchise.

The same abuses have been noted in respect to nominating petitions. In Bokum v. Romero, No. 5307 on the docket of this court, it was asserted that nominating petitions containing 1,067 signatures had been signed with the name of the candidate and the office sought left blank, or that the name and office had been erased and the petitions then completed, using the name of an individual apparently seeking the office of governor. The point of this evolution was popularly supposed to be to "split the Anglo vote." This court ruled the candidate off the ballot, and the next legislature returned to a pre-primary arrangement.

The evolution of legislative acts regulating the means of securing party nominations to office is also of interest, reflecting the efforts of the legislature to comply with the constitutional mandate set forth in Article VII, §1 of the New Mexico Constitution to eliminate abuses and to refine and perfect the selective process.

Prior to 1938, nomination was by convention. In that year, a primary law was adopted which required a filing fee of three percent of the first year's salary. The search for a means of confining the ballot to serious candidates has led us from the original petitions with a three percent fee through pre-primary conventions with a three percent fee after convention selection (and nominating petitions with a similar fee as an alternate to convention selection) to a declaration of candidacy with a three percent fee without petitions.

Ultimately, passing over various intervening legislative episodes, §3-8-26A was passed, which requires a filing fee of six percent of the first year's salary, accompanied by §3-8-27, N.M.S.A., 1953 (Repl. Vol. 1, 1970), which provides

for refund of one-half of the filing fee to a candidate who receives at least fifteen percent of the vote cast by members of his party in the race for the office he seeks.

Radically different from the Texas system recounted in Bullock is the filing fee structure in New Mexico and the use made of such fees.

In New Mexico, the parties do not pay for the primary. Rather than a sum arbitrarily fixed by party officials, a statutory six percent of the first year's salary must be initially paid. For candidates receiving fifteen percent of his party's votes in that race, one-half is refunded, leaving a net of three percent.

One-half of the filing fees of the serious candidates and all of the filing fees of candidates who do not receive fifteen percent of the vote are apportioned among the counties to partially defray the costs of conducting the primary election at the county level. In the 1970 primary, for example, $52,140 came from this source. Even at the county level, the fees do not cover the entire costs. Rather, the election fund receives revenues from other sources, including property taxes. In 1970, these funds amounted to $107,969. Thus, of the total sums which went into the county election funds for expenses at the county level, less than one-third was received from filing fees paid to the Secretary of State.

Moreover, no portion of such fees is used to defray the expenses of the Secretary of State's office, the principal function of that office being the administration and coordination of elections, (Chapter 3, Article 2, et seq., N.M.S.A. 1953), or of the election bureau, a department or division of that office. The Secretary of State's office is supported by appropriations from the State's general fund.

Thus, as contrasted with Texas, the filing fees of candidates do not pay for primaries, except in part. Rather, the primary process is subsidized in substantial, though undisclosed, amounts by the State and various other sources of revenues which are made available for such purposes.

It is nevertheless true that if budgeted sums are not received by the counties from candidates' filing fees, the conduct of the election will deplete other funds of the counties, requiring curtailment of services or diminution of other expenses such as personnel or salary cutbacks in most, if not all, of the counties.

Sections 3-8-26 and 3-8-27, supra, represent in significant measure the efforts of our legislature to achieve the legitimate objective of avoiding overcrowded ballots and protecting the integrity of the state's political processes.

A number of conclusions may be drawn from the refund statute. First, it obviously, by imposing a risk, seeks to discourage other than serious candidates. This is a legitimate objective pursued in a reasonable way. Respondents have inveighed against the risk element. Enterprises of consequence are usually accompanied by risk. We perceive no reason why elections should be otherwise.

We further can, and do, construe the refund statute as specifying the legislative measure by which to gauge a serious candidate, viz., one who garners fifteen percent of the vote. We regard this determination as being liberal. The percentage is very modest. It permits six serious candidates to contend for one office. This is ample and consistent with our constitutional mandate and Bullock.

Thus, as to the New Mexico scheme of filing fees, we first hold that the amount required to be paid involves no element of arbitrary or capricious discrimination against or

among candidates, as was the case in Bullock. We further hold, in light of present day monetary values, that the amounts are by no means unreasonable. The modest six percent does not leap from the page as does the 99.7 percent Texas fee for one office recounted in Bullock.

Obviously, as to the solvent candidate, the fee required, though by no means unreasonable or exorbitant, is in an amount sufficient to give pause to one who is not a serious candidate. No one seems very much concerned about the solvent individual one way or the other, and we will therefore pass on to a consideration of candidates of lesser means.

Wealth is not a prerequisite to a successful seeking of elective office in New Mexico. In fact, it might reasonably be said that New Mexico has something of a tradition that candidates of modest means can achieve success. The evidence makes this clear.

Mr. Mike Anaya, the State Chairman of the Democratic Party, testified that in his extensive experience at both the county and state levels, no serious candidate has been precluded from seeking office by the filing fee requirement. Mr. Fabian Chavez, who has sought a number of offices, usually successfully at least through the primary stage, testified to like effect. He stated that he had often announced his candidacy and commenced his campaign without funds with which to pay the statutory filing fee, but that raising the fee had never presented a problem. Neither Mr. Anaya nor Mr. Chavez knew of any serious candidate who has ever been precluded from seeking office by lack of funds with which to pay the filing fee.

Thus viewed in its true light vis-a-vis the candidate of modest means, the filing fee requirement is not designed, nor does it have the effect of, precluding his entree to the ballot, provided he is a serious candidate. In the case of

the impecunious candidate, the filing fee thus does not test his pocket book, but rather, the extent of his support. If he does not have the requisite support, he does not gain entree to the ballot and no harm is done because he had no occasion to be there. Yet, if he is a serious candidate, the filing fee is no impediment.

We find as a matter of fact that in New Mexico the serious candidate precluded from entree to the ballot by lack of funds does not exist.

In primary elections, by their nature, more candidates' names appear on the ballot than is the case in general elections. It is clear from the evidence, as well as from the court's personal experience, that this involves longer periods of time in the voting machines for the voter, and that in primaries, polling places become crowded and the waiting lines become long and restive.

In recognition of this, our statutes provide for a maximum of three and one-half minutes as the time period the voter may occupy the machine. Section 3-12-43, N.M.S.A., 1953. It is nevertheless, common knowledge, and the evidence clearly shows, that in primaries numerous voters, for whatever reason, do not or cannot wait their turn at the polling places and depart without having voted.

These problems would obviously be compounded by the ballot in its present form. A worksheet introduced in evidence which had been prepared for a Bernalillo County precinct, showed a total of 216 spaces would be occupied by candidates' names. The evidence clearly demonstrates and we find that to permit matters to stand as they are would result in a large, though unknown and unascertainable, number of voters being deprived of their elective franchise. Certainly, these would number at least in the hundreds and in all likelihood in the thousands.

Under the guidelines we have announced, more particularly Bullock, the State, in discharging its obligations, may exclude candidates who are not serious. Conversely, the exclusion of non-serious candidates does not deprive them of any federally recognized constitutional right because such exclusion is a discharge of the obligations of the State to provide its electorate with an uncluttered ballot. This leaves to us a resolution of the question as to who is and who is not a serious candidate. Obviously, this is not a matter susceptible to precise definition, but one must be a candidate with some substantial support for his candidacy among the electorate. Section 3-8-27, supra, however, furnishes a figure of fifteen percent of the vote as a prerequisite to refund of one-half of the filing fee. That statute, in conjunction with §3-8-26A, supra, requiring payment of the filing fee, working together, have proven an effective means of segregation between the serious and non-serious candidates.

There is certainly a valid interest in requiring some preliminary showing of a "significant modicum" of support before printing the name of a political organization and even more importantly the names of its candidates on the ballot. Jenness, et al. v. Fortson, Secretary of State of Georgia, 403 U.S. 431, 29 L.Ed.2d 554, 91 S.Ct. 1970.

It is suggested that we should refrain from all action, leaving corrective measures to the legislature. The inference seems to be that we are only concerned with one primary election—a matter of small consequence, and that somehow the electorate will muddle through.

Certainly alterations in the primary scheme may be appropriate and, if so, legislative action is clearly indicated. But we do not view our responsibilities so lightly. As matters stand, the electorate is in jeopardy of being

deprived of the benefits of the constitutional mandates that the elective franchise be free from abuse and to an uncluttered ballot.

It may be true that our immediate concern is with one primary election which will soon be history, but its effects will linger on, because emerging from the miserable shambles which exists will be nominees, depending upon the outcome of the general election, who will serve from January 1, 1973 for a period of eight years in the case of one Supreme Court and one Court of Appeals seat, and six years in the case of a United States Senator, a Corporation Commissioner and every district judge in the State. Other officers would be elected for lesser terms.

Before concluding our opinion, we must decide as to the standard by which to measure or evaluate the question of the constitutionality of our primary election filing fee requirements [§3-8-26A, supra] in the light of our legislative history in the area of political party nominations and our experiences and successes in the accomplishment of legislative objectives in this area under our filing fee system. Is the proper standard that of "rational relationship," or the more stringent one of "reasonable necessity," to the accomplishment of legitimate State objectives?

The question as to which of these standards was applicable to the Texas filing fee system was discussed and resolved in Bullock. Under the facts of that case, and "* * * [b]ecause the Texas filing fee scheme has a real and appreciable impact on the exercise of the franchise, and because this impact is related to the resources of the voters supporting a particular candidate, * * *" the United States Supreme Court determined that the Texas

laws establishing a filing fee system in that State "* * * must be 'closely scrutinized' and found reasonably necessary to the accomplishment of legitimate state objectives in order to pass constitutional muster."

In making this determination, the court stated in part:

> "In approaching candidate restrictions, it is essential to examine in a realistic light the extent and nature of their impact on voters.
>
> "Unlike a filing fee requirement which most candidates could be expected to fulfill from their own resources or at least through modest contributions, the very size of the fees imposed under the Texas system gives it a patently exclusionary character. * * * Not only are voters substantially limited in their choice of candidates, but there is the obvious likelihood of this limitation falling more heavily on the less affluent segment of the community, whose favorites may be unable to pay the large costs required by the Texas system. * * * [W]e would ignore reality were we not to recognize that this system falls with unequal weight on voters, as well as candidates, according to their economic status."

The court in Bullock also stated in considerable detail the legitimate interests and duties which a state has in the regulation of elections as shown by the quotation above from the opinion to this effect.

In the absence of any "evidence of any kind * * * in the record from which a legitimate state objective [could] be found," the three-judge federal court sitting in Dillon held that the statutory filing fee system in New Mexico, as applied to the three plaintiffs seeking to become candi-

dates for nomination to the office of United States Senator, was not "reasonably necessary to the accomplishment of legitimate state objectives."

The legislature of the State of New Mexico is charged with the duty of enacting laws which will secure the purity of elections and guard against the abuse of the elective franchise. Art. VII, §1, Constitution of New Mexico. As above related, our legislature has pursued, and the electorate of this State has tried, several ways of discharging this duty in regard to the process of nominating candidates for elective offices. New Mexico has legitimate interests in avoiding overcrowded ballots, in protecting the integrity of its political processes from frivolous and fraudulent candidacies, and in relieving, or at least in reducing, the costs to the State and county treasuries of conducting primary elections. Every barrier to candidacy access to the primary ballot, which is created in the accomplishment of these legitimate interests and with the purpose of protecting the right of franchise guaranteed to all qualified voters, is not subject to that degree of scrutiny which will meet the requirement of reasonable necessity. See Bullock v. Carter, supra. Unlike the court in the Bullock case, we know the number of candidates who have sought to enter the New Mexico primary, know the overcrowding of the ballot which will result if the names of all are permitted to be placed on the primary ballots as candidates, and know that a number of those who have filed declarations of candidacy will be fraudulent or frivolous candidates if given candidacy status on the primary ballot. It is apparent to us that the nominee for many positions will fall far short of having the support of a majority of the voters, or even a substantial plurality thereof. Instead of assuring equal protection of the franchise to New Mexico voters, the

potentially overcrowded ballot would result in the protection of clearly foreseeable inequalities in the exercise of this right of franchise.

The evidence in the record before us discloses and convinces us that no serious candidate has ever been barred from the primary ballot by our filing fee system. Unlike the Texas filing fee system which was declared constitutionally invalid in Bullock, our system, as shown by the evidence adduced, makes requirements as to filing fees which any serious candidate could be expected to fulfill from his own resources, or at least through modest contributions from his supporters.

We cannot say that our filing fee system, or any filing fee system, or for that matter any system yet devised to protect the purity of the elective ballot and the right of franchise, falls with absolutely equal weight upon the voters. The weight of the position of every voter, in relation to what must be done by him to successfully exercise his right of franchise, cannot be absolutely equal to the weight which the position of every other voter requires must be done to accomplish the exercise of this right. We can and do say with conviction that the record in this case clearly establishes that no measurable differences between burdens and no demonstrable differences between the chances of failure or success at the polls, are imposed upon serious candidates, and particularly upon their supporters by reason of their economic status, as a result of the filing fee requirements. We are convinced that in New Mexico at least, the economic status of a serious candidate has no substantially real relationship to the economic status of his supporters, and that matters such as political affiliation, geographic location of residence, uncommonness of name, and social, religious and other relationships and conditions present far greater ob-

stacles to political success than that of raising the required filing fee.

We are of the opinion that the posture of this case, as presently before us, requires only that we determine a rational relationship exists between our filing fee requirements and the legislative duty to protect the purity of elections and guard against abuses of the elective franchise in order to meet the requirements of the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States and of Art. II, §18 of the Constitution of New Mexico. Clearly a rational basis for our filing fee system is demonstrated by the record in this case.

However, even if the proper standard should be that applied by the court in Bullock, we would still reach the same result, because there is no doubt in our minds that the application to the forthcoming primary election of the filing fee requirements of §3-8-26A, supra, is reasonably necessary to protect the purity of the nominating process to be accomplished in that election, to protect against the appearance on the ballots of the names of frivolous and fraudulent candidates, to assure that the nominees elected have the support of at least a substantial plurality of the voters, and to assure the voters equal protection of the law in relation to the exercise of their voting franchise.

Even if we were of the opinion that §3-8-26A, supra, fails to meet the constitutional requirement of equal protection, we would not, because of the time element, apply our ruling to the forthcoming primary election, but would follow the course taken by the court in Jenness v. Little, 306 F.Supp. 925 (D.C.N.D. Ga. 1969). We would make our decision apply prospectively only to primary elections

to be held subsequent to the June 6, 1972 primary election, and we would do so to avoid what we believe will be certain chaos, confusion, frustration and disenfranchisement of a great number of our voters, if the ballots carry the names of all who have filed declarations of candidacy. Our voting machinery is not geared to handle ballots of this length during the allotted time of 8:00 a.m. to 7:00 p.m. on the same day, as provided by §3-12-1, N.M.S.A. 1953 (Repl. Vol. 1, 1970).

Finally, a word concerning Dillon. We are not bound by that decision, if we understand it correctly. United States ex rel. Florence v. Woods, 432 F.2d 1072 (7th Cir. 1970), cert. denied, 402 U.S. 983 (1971). We have, however, given weight to the specific holding in Dillon by excepting Messrs. Dillon, Cole and Gallard from the purview and operation of our decision. This we are pleased to do, not only under an extension of the doctrine of comity between courts, but by reason of our warm regard and respect for our learned brethren of the three-judge panel.

It has been argued to us that the true effect of Dillon was to exempt the Senate race from the operation of §3-8-26A, supra. From a careful reading of the Memorandum Opinion, we do not see how this could be so, although admittedly, there is language in the Memorandum Opinion to this effect. From an examination of the pleadings and the scope of the issues thereby presented, as well as the rationale of the Memorandum Opinion, it is clear that the three-judge panel reached its result predicated upon the fact that the named individuals were unable to pay the filing fee. As carefully pointed out in the Memorandum Opinion, there was no evidence adduced and it would thus have been logically impossible for the court to have determined that all others who might seek to be-

come candidates were without funds with which to pay the required filing fees. In fact, their identities could not even then have been known.

We, on the other hand, have the advantage not only of having this information available, but also of having heard and considered lengthy testimony and other relevant evidence.

While we have readily conceded the supremacy of the United States Supreme Court on federal constitutional questions and recognize the fact that careful consideration ought to be given to decisions of inferior federal courts, we are at the same time mindful of the fact that our decisions are supreme on state constitutional questions and the objectives, purposes, true legislative intent and meaning of state statutes.

We should and do hereby affirm the validity of our decisions and commands stated in the "Order Making Alternative Writ of Mandamus Absolute" which was issued on April 17, 1972.

IT IS SO ORDERED.

s/ John B. McManus, Jr., J.
s/ LaFel E. Oman, J.
s/ Donnan Stephenson, J.